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C O N F I D E N T I A L SECTION 01 OF 03 ANKARA 002731

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SUBJECT: TURKEY'S NATIONALISTIC JUDICIARY AN OBSTACLE TO REFORM

REF: A. ANKARA 404  
[B. ANKARA 1835](#)  
[C. ISTANBUL 0957](#)  
[D. ANKARA 2412](#)  
[E. 06 ANKARA 3772](#)

Classified By: Political Counselor Janice G. Weiner, reasons 1.4(b),(d)

[1](#)1. (C) Summary: A diverse array of legal experts agree the judiciary (judges and prosecutors) has been a major force in Turkey's failure to fully implement legal reforms related to its EU harmonization effort. Contacts from academia, private practice, government, and civil society told us that, though Turkey has made tremendous strides toward harmonization of its laws with EU standards, Turkey's judicial establishment remains an impediment to political and human rights reform. While there is a small group of progressive, reform-minded attorneys, the bulk of Turkey's judicial establishment, reared on deep-rooted Kemalist ideas of national integrity and Turkish identity, is reluctant to enact the wholesale changes urged by the EU and sought by less traditional sectors of Turkish society. Continued training and international oversight will propel the reform process, but the real challenge will be changing the judiciary's entrenched mindset. End summary.

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Turkey Struggles to Implement Legal Reforms  
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[1](#)2. (C) Prior to opening EU accession negotiations in 2005, Turkey undertook a campaign of significant legal reforms. Through several constitutional amendments and an overhaul of the criminal and civil codes, the GOT outlawed the death penalty and torture, decreased restrictions on freedom of expression, granted criminal defendants greater due process rights, gave men and women equal rights, and broadened the rights of religious minorities. Sema Kilicer, a human right expert in the EU Commission's Ankara office, told us the judicial establishment has struggled to implement these reforms and in many cases has outright blocked them. Though incidents of egregious human rights abuses, such as torture, had dramatically declined since the 1990s, courts propagated a culture of impunity by doling out lenient sentences in cases of abuse. Kilicer believes that the judiciary also is the driving force behind continuing prosecutions of non-violent criticism of state policies on secularism, Kurds, the military, and state-sanctioned interpretations of history.

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Nationalist Judiciary Impeding Progress  
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13. (C) Yusuf Alatas, former Human Rights Association (HRA) President and a practicing attorney, told us there are two camps in Turkey's legal establishment of judges, prosecutors, and Ministry of Justice officials: enlightened reformers and conservative nationalists. Reformers, a relatively small group, promote the rule of law and protection of civil liberties. Nationalists, the overwhelming majority, continue to hold pre-reform ideas about defending national integrity, governmental institutions, and Turkish identity. According to Alatas, they see most reforms as a threat to the fundamental nature of the Turkish Republic, and therefore favor restrictive legal interpretations of new laws. He pointed out that prosecutors and judges come from similar socio-economic backgrounds, receive their legal training together, are housed together once assigned to regional positions, and are reared on secular Kemalist philosophy. This core, accustomed to legal changes proceeding piecemeal, has vehemently opposed the wholesale legal changes that curbed the role of the military in the justice system and fundamentally revised the penal code.

14. (C) Constitutional law professor Ergun Ozbudun, who chaired an experts team that drafted constitutional revisions for the ruling Justice and Development Party (AKP), attributes the problem to Turkey's "immature democracy." Ozbudun believes Turkey's justice system has begun a long, slow evolution that ultimately will change a legal mindset still "entrenched in the past." He said the backward mindset

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is epitomized by a group of ultranationalist private attorneys who doggedly push prosecutors to investigate statements that allegedly insult "Turkishness." Under Turkish law, prosecutors are obliged to investigate the charges, Ozbudun explained; in the current nationalistic atmosphere, many prosecutors go on to file indictments. Once an indictment is filed, many judges have used the "partie civile" legal doctrine to allow such private attorneys to join a case as a third party, effectively giving them broad powers to name and question witnesses and appeal rulings to a higher court. Ozbudun does not see any quick fix to the problem. Legal ambiguities allow judges to interpret some laws at will, and malicious prosecution is difficult to prove. Ozbudun predicts changing the mindset of prosecutors and judges will be a slow and difficult process.

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One Kafka-esque Example  
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15. (C) The saga of the trial against Baskin Oran, a retired Ankara University professor known for his outspoken views on human rights (refs A, B), epitomizes the judiciary's failings. According to Oran, Turkey's judiciary is the single largest obstacle to human rights reform in the country. Oran described the latest machinations in the "Kafka-esque" case against him, which began in 2004 when Oran and a colleague were prosecuted for inciting hatred and denigrating "Turkishness" by recommending in a GOT-solicited report that the government expand the rights of Turkey's minorities. The trial court acquitted Oran in 2006 after he delivered an impassioned defense that demonstrated the case had no legal merit. The Court of Cassation (COC) overturned the acquittal in July 2007. The COC Chief Prosecutor disagreed with that decision, and took the extraordinary measure of sending the case to the COC's General Assembly of Penal Chambers for reconsideration. The General Assembly has not yet determined whether to reinstate the trial court's acquittal or remand the case for a retrial.

16. (C) Initially, Oran said, he naively saw the GOT-solicited

report as merely a 7-page restatement of well-settled international principles on minorities. But as the prosecution proceeded, he realized he had deeply offended the judicial establishment, which sees its ultimate duty as "defending Turkey." Oran contends the "baseless" legal case against him has morphed into a "purely political matter" where the judges feel they must convict him to demonstrate their nationalist bona fides. Oran said his friend, Constitutional Court judge Osman Can, was one of the few "bold, reform-minded attorneys who won't be silenced." But, in his opinion, these few face an uphill battle against the "dangerous" individuals who dominate the judiciary.

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Continued Training Helps Propel Reform Process  
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¶17. (SBU) Ankara Bar Association President Vedat Ahsen Cosar cautioned us to not lose sight of Turkey's immense progress since 2002 stemming from EU harmonization efforts. He, too, is frustrated by continuing problems such as excessively long trials, limitations on free expression, and occasional maltreatment of detainees. But EU-sponsored training of lawyers, judges, and police in such areas as the new penal code, human rights principles and modern procedural standards has lowered incidences of maltreatment, improved access to defense counsel, improved court administration, helped achieve more fair treatment under the law, and improved investigative techniques. Cosar is confident that continued training will lead to further improvements in the justice system.

¶18. (SBU) EU Commission legal expert Nur Onsoy agreed that continued training is critical but believes large institutional deficiencies persist. According to Onsoy, the EU has increased its funding to the Turkish judiciary -- from 409 million euros in 2005 to 485 million euros in 2006 -- with plans to increase to 865 million euros by the end of ¶2007. Much of the funding has targeted modernizing information technology, resulting in increased efficiency of

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court proceedings. Onsoy said a key remaining problem is executive interference in the independence of the judiciary and unequal treatment of defense counsel. Through its links to the High Council of Judges and public prosecutors, the executive can influence judicial training, appointment, promotion, and financing. It can also influence which judges and prosecutors are assigned to sensitive trials. Another major shortcoming is that Turkish prosecutors enjoy a status very close to that of judges, both functionally and symbolically, effectively placing defense counsel at a disadvantage. Onsoy believes that the EU, USG, and other international actors must press Turkey to make these institutional changes that continue to thwart its judicial modernization.

¶19. (C) Comment: The judicial establishment's behind-the-scenes maneuvering, as well as not-so-subtle attempts to thwart change, often overshadow the substantial legal reforms that have occurred. Examples of judicial interference continue, including the legal harassment of pro-Kurdish Democratic Society Party (DTP) members (ref D); the firing and de-barring of the public prosecutor who indicted then-CHOD General Buyukanit following the Semdinli bombing (ref E); and most recently the allegedly tainted investigation into the murder of Hrant Dink (ref F), seen by international observers as a litmus test for whether the Turkish judicial process can fairly and effectively investigate and prosecute those responsible in a case imbued with nationalistic overtones. The judiciary's staunchly traditional Kemalist roots and the current nationalistic atmosphere suggest a change in mindset as well as practice may take years. End comment.

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